

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ILLUMINA, INC., et al.,

Plaintiffs,

v.

BGI GENOMICS CO., LTD, et al.,

Defendants.

Case No. 19-cv-03770-WHO (TSH)

DISCOVERY ORDER

Re: Dkt. No. 131

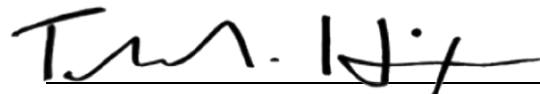
Illumina says the issue is urgent, so the Court opts for speed over length in drafting this order. “The attorney-client privilege ‘may attach to communications between nonlegal employees where: (1) the employees discuss or transmit legal advice given by counsel; and (2) an employee discusses her intent to seek legal advice about a particular issue.’” *Dolby Labs. Licensing Corp. v. Adobe Inc.*, 402 F. Supp. 3d 855, 866 (N.D. Cal. 2019). Having performed an *in camera* review of the emails at issue, the Court finds that the first entry in the privilege log satisfies this standard. The second entry is a communication directly to an attorney for the purpose of seeking legal advice and is privileged. The third entry is the transmission of legal advice by an employee, and in context it is clearly advice the employee received from counsel, so that is privileged. For the fourth and fifth entries, Defendants proposed to produce a redacted version of the fourth entry (redacting a sentence) and the entirety of the fifth entry contingent on Illumina’s agreement that such a proposal would not amount to a waiver of privilege or work product, which Illumina declined to agree to. The Court concludes that Defendants’ proposal should not have been contingent on Illumina’s agreement. For the fourth and fifth entries, Defendants were effectively drawing the line in the right places – the fifth entry is neither privileged nor work product, and with the proposed redaction, neither is the fourth. Accordingly, the Court orders Defendants to

1 produce the Redacted Zhao Email Chain 1.pdf, Unredacted Zhao Email Chain 2.pdf and HC-202-
2 03-31.xlsx immediately.

3 These documents should have been produced before the deposition, and in particular the
4 spreadsheet has enough information in it to merit additional questioning. Accordingly,
5 Defendants shall make Zhao available for one additional hour of deposition concerning these
6 materials by April 29, 2020.

7 **IT IS SO ORDERED.**

8
9 Dated: April 27, 2020



THOMAS S. HIXSON
United States Magistrate Judge

United States District Court
Northern District of California